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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7762 OF 2017

Dnyanoba s/o Mhalappa Kharsade
Age - 75 years, Occ - Agriculture
R/o Talnyachi Wadi, Taluka - Georai,
District - Beed

PETITIONER

VERSUS

1. Narayan s/o Ashraji Dhas
Age - 67 years, Occ - Agriculture
R/o Talnyanchi Wadi, Taluka - Georai
District - Beed

RESPONDENTS

2. Ramnath s/o Narayan Dhas,
Age - 46 years, Occ - Agriculture
R/o Talnyachi Wadi, Taluka - Georai,
District - Beed

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Mr. Suhas B. Ghute, Advocate for the petitioner

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 21st JUNE, 2017

ORAL JUDGMENT :

1. Heard learned advocate for the petitioner.
2. The petitioner is before this court challenging order dated 11th January, 2017 passed by Civil Judge, Junior Division, Georai thereby allowing Exhibit-42 subject to payment of costs of Rs.2,500/- and the order passed "*suit to proceed with without written statement against applicants of Exhibit-42*" has been set

aside.

3. Learned advocate for the petitioner contends that application does not contain any plausible reason explaining lapse on the part of defendants to file application for setting aside no written statement order, after lapse of almost three years. He submits that even there is no delay condonation application. He further goes on to contend that while learned judge of the trial court has referred to certain documents, those documents were not on record until say had been filed to Exhibit-42 by the petitioner. Learned advocate further purports to contend that petitioner had specifically denied that defendant had ever been to Pune for treatment or had ever been suffering any illness. He, therefore, submits that application Exhibit-42 ought to have been rejected by the trial court instead of it being allowed and, as such, the petitioner is before this court.

4. Perusal of the impugned order shows that the learned judge has taken into account documents filed along with application Exhibit-42 and formed an opinion that defendant had been taking treatment for some disorder. Learned judge further observed coupled with statements in the application about illness and the material on record and particularly in the absence of

material supporting contentions of plaintiff about defendant having not taking treatment, it would be in the fitness of things to give an opportunity to file written statement for just decision and for determination of real controversy between the parties.

5. Reference to the name to be Ramdas and not Ramnath in certain documents, according to learned judge would not be of such significance as to ignore contentions on behalf of the respondents. In the circumstances, the trial court had considered the material and allowed the application.

6. Trial court, with reference to material on record has formed its opinion and considered it expedient in its discretion to allow application Exhibit-42 to have a contest on merits. In the circumstances, this is not a case of such nature which deserves to be meddled with under writ jurisdiction.

7. As such, writ petition is not being entertained and stands rejected.

[SUNIL P. DESHMUKH, J.]